

EXHIBIT I

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 In re: Federal Mogul Global, et al.,
4 Debtors.

5 THE OFFICIAL COMMITTEE OF Chapter 11
6 ASBESTOS CLAIMANTS and ERIC D. Jointly Administered
7 GREEN, as the LEGAL Bankruptcy
8 REPRESENTATIVE FOR FUTURE No. 01-10578 (RTL)
9 ASBESTOS CLAIMANTS,

10 Plaintiff,

11 Case No. 05-00059 (JHR)

12 -vs-

13 ASBESTOS PROPERTY DAMAGE
14 COMMITTEE,

15 Defendant.

16 Mitchell H. Cohen United States Courthouse
17 One John F. Gerry Plaza
18 Camden, New Jersey 08101
19 JUNE 16, 2005

20 B E F O R E: THE HONORABLE JOSEPH H. RODRIGUEZ
21 UNITED STATES DISTRICT JUDGE

22

23 A P P E A R A N C E S:

24 CAMPBELL & LEVINE, LLC
25 BY: MARLA R. ESKIN, ESQUIRE
26 KATHLEEN J. CAMPBELL, ESQUIRE

27 -and-

28 CAPLIN & DRYSDALE, CHARTERED
29 BY: ELIHU INSELBUCH, ESQUIRE
30 NATHAN D. FINCH, ESQUIRE
31 DANIELLE K. GRAHAM, ESQUIRE
32 -and-

1

2

3 A P P E A R A N C E S C O N T I N U E D:

4 YOUNG CONAWAY STARGATT & TAYLOR, LLP
5 BY: ROLIN BISSELL, ESQUIRE
5 MARIBETH L. MINELLA, ESQUIRE

6 ATTORNEYS FOR PLAINTIFFS LEGAL REPRESENTATIVE FOR
FUTURE ASBESTOS CLAIMANTS

7

8

9 FERRY, JOSEPH & PEARCE, P.A.
9 BY: THEODORE J. TACCONELLI, ESQUIRE
10 LOCAL COUNSEL TO THE OFFICIAL COMMITTEE OF ASBESTOS PROPERTY
DAMAGE CLAIMANTS

11

12 WEIL, GOTSHAL & MANGES LLP
12 BY: MICHAEL P. KESSLER, ESQUIRE
13 ADAM P. STROCHAK, ESQUIRE
13 PETER M. FRIEDMAN, ESQUIRE
13 KRISTIN KING BROWN, ESQUIRE
14 ATTORNEYS FOR THE DEFENDANT OFFICIAL COMMITTEE OF ASBESTOS
PROPERTY DAMAGE CLAIMANTS

15

16

17

18

19

20

21

22

23

24

25

Theodore M. Formaroli, CSR, CRR
Official Court Reporter
New Jersey CSR # 433

484

1 W I T N E S S I N D E X

2 WITNESS

3 MARK PETERSON

4 Continued Direct Examination Page 486
5 Cross-Examination Page 585

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

485

1 E X H I B I T S

2 EXHIBIT	3 NUMBER	4 PAGE
5 PLAINTIFF EXHIBIT	P-6	PAGE 558
6 PLAINTIFF EXHIBIT	P-16	PAGE 564
7 PLAINTIFF EXHIBIT	P-7	PAGE 565
8 PLAINTIFF EXHIBIT	P-4	PAGE 585
9 DEFENDANT EXHIBIT	PD-91	PAGE 653
10 DEFENDANT EXHIBIT	PD-16	PAGE 670

Peterson - Direct - Inselbuch

1 THE COURT: Be seated, please.

2 MR. INSELBUCH: Good morning, your Honor. May we
3 proceed?

4 THE COURT: Yes.

5 (CONTINUED DIRECT EXAMINATION OF DR. PETERSON BY MR.

6 INSELBUCH:)

7 Q. Good morning, Dr. Peterson.

8 A. Good morning.

9 Q. When we recessed yesterday, we had concluded your
10 discussion of the valuation of Turner & Newall's pending
11 claims and we will turn now to your estimation and valuation
12 of Turner & Newall's liability for future claims?

13 MR. INSELBUCH: And I would ask the Court to turn to
14 Slide 26 of Plaintiff's Exhibit 4 for identification and
15 that's where we'll begin.

16 Q. Dr. Peterson, would you state, describe to the Court how
17 you go about evaluating Turner & Newall's liability for future
18 claims?

19 A. Well, this is the same basis as I used to value pending
20 claims. But here, of course, the number of future claims is
21 an uncertain and unknown number, so we have to forecast it. We
22 also need to forecast year by year for each future year
23 because we have to take into account monetary inflation and
24 the year of payment in order to discount the payments back to
25 2001 to present value, so that's the only difference.

Peterson - Direct - Inselbuch

1 Q. How did you go about doing that?

2 A. I made forecasts separately for each of the disease
3 categories, mesothelioma, lung cancer, other cancers and
4 nonmalignant claims. I did not forecast the unspecified
5 category because they don't get paid anyway, so I just have
6 ignored the number that might arise and get resolved as
7 unspecified.

8 I did this by first looking at the historical
9 experience, the claim filing experience for this company, also
10 looking at the claim filing experience of other companies to
11 get an understanding of trends that were -- trends and claim
12 filings that were happening generally in asbestos litigation.
13 The Turner & Newall data gave me the information about the
14 specifics for this particular defendant. And then I also
15 looked, of course, and took into consideration many of the
16 things that were happening in asbestos litigation that I
17 described yesterday that would have impacted not only the
18 future trend in the claim values but the future trend in the
19 filings of claims, those same matters, the bankruptcies of
20 other major defendants, the termination of the Center for
21 Claims Resolution, the increased publicity and attention
22 devoted to Turner & Newall, all of those are matters that
23 would have continued and added pressures towards increasing
24 the number of claims. So, I looked at all those.

25 And I also looked at what was happening with regard

Peterson - Direct - Inselbuch

1 to claim filings against other defendants in 2002, three and
2 four because this provides me with information, a sanity check
3 really is what I'm doing. So, I looked at all those. But I
4 started with a claims data base of claim filings, which is
5 shown on the next slide here.

6 Q. Can you describe to the Court what Slide 27 and Slide 28
7 are?

8 A. They're both drawn from the Turner & Newall asbestos
9 claims database. Slide 27 represents the number of claims
10 filed in each year. There are several different variables to
11 speak to when a claim is filed in the Center for Claims
12 Resolution data, which is the predominant source of
13 information. One was the date of filing, which is meant to be
14 the date a complaint was filed. The second is the date the
15 claim was received by the Center for Claims Resolution on
16 behalf of Turner & Newall. The third is the service date.

17 And we took the earliest of those three dates and
18 used that as the basis for calculating when claims were filed
19 against Turner & Newall. In part because there was a -- the
20 Georgine class action that was described in Mr. Hanly's
21 testimony, this disrupted claim filings. As he commented,
22 there was a stay in claims during that period in time, so
23 claims were not being received by Turner & Newall or other CCR
24 members, but they were being filed, they were being filed
25 against other co-defendants, and so on, so we used that in

Peterson - Direct - Inselbuch

1 order to smooth out and get a better representation of when
2 these claims were arising.

3 If you'll note on Figure 27, there are of the 381,000
4 claims that were filed, 36,800 of them did not have a
5 specified disease, and so the difference between Tables 27 and
6 28 is we allocated imputed diseases for most, but not all, of
7 these unspecified diseases because over time Turner & Newall
8 would learn about what the disease was. And as I described
9 yesterday, we used the actual experience that Turner & Newall
10 had in determining diseases from claims that were unspecified
11 and used that as a basis to spread these across the other
12 disease categories, but we kept 10,565 claims in the
13 unspecified disease category, again, as I described yesterday,
14 representing our expectation of the numbers of claims both
15 pending and future that would be resolved without payment in
16 this unspecified disease category.

17 I should also note that the total claims, 381,000, in
18 both of these slides is the actual number of claims through
19 2001. It's only nine months. But we show here annualized
20 filing rate for 2001 what would have been the total number of
21 claims received in 2001 if during the last three months claims
22 came in at the same rate that they did for the first 9 months.
23 And that's a step that just makes it easier to do the -- to
24 represent what the actual trends in claim filings here were
25 and it gets involved in my calculation of historic claim

Peterson - Direct - Inselbuch

1 filing rates.

2 Q. Starting with the historic filings as reallocated as
3 you've shown on Table or Slide 28, what did you next do to
4 estimate the future number of claims that Turner & Newall
5 would see?

6 A. Well, I mean, I examined this data, first of all, which
7 confirmed that, indeed, trends were going up with regard to
8 claim filings. And in the most recent year, 2001, there was a
9 particular spike in nonmalignant claims.

10 The next steps with regard to forecasting are
11 described on Slide 29. Essentially, we used -- we started
12 forecasting the mesothelioma lung cancer and other cancer
13 incidents. We have good data about what is the expected
14 incidence of those diseases in the population of persons who
15 are exposed to asbestos, how many mesotheliomas will occur in
16 the exposed population year by year. The same for lung cancer
17 and other cancer. I'll provide more description of that in a
18 moment.

19 But we then, having that good and confirmed medical
20 research forecasting incidence both in the past and the
21 future, the number of deaths from each of those cancers
22 resulting from asbestos exposures, we compared those past --
23 in past years we compared the number of occurrences of
24 mesothelioma in a year to the number of claims filed against
25 Turner & Newall in that same year. The number of occurrences

491

Peterson - Direct - Inselbuch

1 represent the potential, how many claims might have been filed
2 against this company. The actual claims, of course, represent
3 the actual experience of filings. And so by comparing the
4 two, by dividing the number of claims by the incidence, we can
5 calculate a rate of claiming. And that rate of claiming was
6 first called the propensity to sue in some of the earliest
7 work using this method in the early nineteen-eighties, and so
8 we've continued to use that term.

9 I can then, having determined what the past
10 propensity to sue is, I both look at the present levels, what
11 was the rate of claiming at the time that Turner & Newall
12 entered bankruptcy, as well as what were the trends in that
13 because you need those, both parameters are important. We
14 would expect that the claiming in the future would be at
15 about -- begin at about the rate we've seen in the most recent
16 time, but to the degree that that has been increasing or
17 decreasing, it's -- the first kind of assumption is, well, it
18 will probably continue in the past trends that we've seen.
19 That's an assumption that I made, that's an assumption that
20 two of the other three experts that have provided opinions in
21 this case also made.

22 To forecast nonmalignant claims, we don't have they
23 same epidemiological information about the occurrences of
24 cancers. There is no similar peer reviewed epidemiological
25 study like the one I use for cancers that provides that

Peterson - Direct - Inselbuch

1 information of occurrences of nonmalignant diseases. To
2 forecast nonmalignant diseases, I've used what's become the
3 standard method I think among most forecasters, I looked at
4 what's been the historic relationship between the number of
5 nonmalignant claims filed annually against Turner to the
6 number of cancer claims. And we observed that's a fairly
7 stable relationship and we assume that stability will continue
8 in the future. So essentially, just like I hang values for
9 other disease off the mesothelioma values I described
10 yesterday, here I hang the forecast of nonmalignant claims off
11 of the forecast for cancer claims, again looking at the
12 historic relationship between those, as I did in the values,
13 to forecast the future.

14 Q. With that by way of background, can you describe to the
15 Court how you began?

16 A. Well, to further examine what was the history, I looked
17 at the empirical data on past experience graphing it, which is
18 shown on Figure 30, and that demonstrates that for each of
19 these cancers, there was considerable increase in the number
20 of cancer claims in the last two years preceding the
21 bankruptcy. So this leads to the expectation -- and I
22 understand somewhat why that happens. As I described
23 yesterday, the bankruptcies by other defendants contributed to
24 filings against Turner & Newall in 2000/2001 until it itself
25 filed for bankruptcy, as well as for cancers, the increased

Peterson - Direct - Inselbuch

1 advertising.

2 I didn't describe that yesterday, but one of the
3 things that's happened in recent years is the plaintiffs'
4 lawyers have substantially increased their advertising to gain
5 representation of asbestos-related cancer victims and in
6 particular on the internet. That's a very widely used
7 advertising means now that, frankly, didn't exist ten years
8 ago. In fact, if you log on to Google, you Google the word
9 "mesothelioma," almost all the hits you see are references to
10 plaintiffs' lawyers who are paid to be called up by the Google
11 search. That's how Google makes its money. And that's, I
12 think, a powerful and effective way for them to get claims, as
13 well as the fact that there are whole new law firms springing
14 up that just concentrate on cancer claims. So, those are
15 trends that effect all defendants, and that's what's going on
16 here.

17 I want to make one comment about the spike that
18 occurred in the mid nineteen-eighties. That occurred because
19 of the entrance of Turner & Newall in the Center for Claims
20 Resolution and in the Asbestos Claims Facility. According to
21 the procedures that obtained at that time in both of those
22 organizations, all of the members of those organizations
23 shared liability whether or not they were named defendants, as
24 Mr. Hanly described that changed, he described in the later
25 years each member of the Center for Claims Resolution is only

Peterson - Direct - Inselbuch

1 responsible for claims in which it was a named defendant.
2 Early on they didn't have that rule, everyone contributed to
3 every claim.

4 So as a result, at that point in time, Turner &
5 Newall essentially accepted and got liabilities for claims of
6 all members, including claims that had been filed in the past
7 before those entities are formed, so that's why you see the
8 spike in the mid eighties. But ignoring that trend, that
9 artificial -- ignoring that artificial spike in the early
10 eighties, there is clearly a sharp increase in the number of
11 filings, particularly in most recent years.

12 And so then I took those trends and compared them
13 with the epidemiological forecasts.

14 Q. And from where do you get the epidemiological forecast?

15 A. There is only one peer reviewed medical study that
16 provides the kind of information necessary to do this
17 forecasting, it's a study by Doctors Nicholson, Perkel and
18 Selikoff, who are the primary researchers really in this area
19 working at Mount Sinai. Dr. Selikoff is the dean of this
20 work. And in 1981 and then in 1982, they published a report
21 in which they looked at all of the workers, counted all
22 workers that are working in the major asbestos-exposed
23 industries, made estimates of the relative amount of asbestos
24 fibers that they were exposed to, looked at turnover in the
25 labor populations in each of those industries, and then

Peterson - Direct - Inselbuch

1 applied rates of development of medical disease, of cancers,
2 in order to forecast future claims.

3 And the results of that work is shown on Exhibit 31
4 where they forecast for all years from 1970 through the year
5 2030 the number of persons who would die each year from
6 asbestos-related lung cancer and asbestos-related meso or
7 another cancer, again the three categories of interest,
8 cancers that I need for forecasting claims. This is both the
9 only peer reviewed study of this nature and also it's the most
10 widely used epidemiological study both in litigation and
11 within the medical community, and also it's been confirmed
12 impressively, I'll show that in a moment. Again these are
13 forecasts. It's like my forecasts are scientific predictions,
14 these are forecasts of their scientific predictions. And
15 we've been able to test how -- and they were made in 1982, so
16 we've had 20 years to see how good these are.

17 MR. INSELBUCH: The Nicholson article to which Dr.
18 Peterson referred is already in evidence, your Honor, it's
19 Plaintiff's Exhibit 5, and it was admitted during the
20 testimony of Dr. Welch.

21 BY MR. INSELBUCH:

22 Q. Would you describe to the Court what Slide 31 shows?

23 A. These show the annual deaths from asbestos-related lung
24 cancers for each of these years, which is the blue dotted line
25 for asbestos-related Mesotheliomas. Indeed, mesothelioma --

Peterson - Direct - Inselbuch

1 the only known cause of mesothelioma is asbestos exposure.
2 And the green dotted line is annual deaths from asbestos
3 exposure for a series of cancers that are related to the
4 gastrointestinal track, from the larynx down to the colon, all
5 of which there is evidence of, although to some degree
6 contested in, as Dr. Welch testified, all of which there's
7 evidence suggesting and indicating that those are caused by
8 exposure to asbestos. And, indeed, the researchers at Mt.
9 Sinai believed and believe today, in my most recent
10 conversations with them, that those diseases can be caused by
11 asbestos exposure.

12 Q. You told the Court that there was a way over the 20 years
13 to see whether the Nicholson projections were proved out in
14 the real world.

15 A. Yes.

16 Q. How did you go about doing that?

17 A. This was discussed during Dr. Welch's testimony, that the
18 National Cancer Institute Surveillance of Epidemiology and End
19 Results provides data estimates really of the annual number of
20 deaths for every kind of cancer. Essentially, the SEER
21 program monitors the occurrences and results of cancer in 13
22 locations, 13 sites around the country, the State of Iowa is a
23 site, Los Angeles, Long Beach is a site, Honolulu is a site.
24 There are 13 around the country that are chosen to be
25 reasonably representative of the demographics of the nation as

Peterson - Direct - Inselbuch

1 a whole. And they count the number of people that get and die
2 from each of the asbestos -- from each kind of cancer
3 irrespective of asbestos exposures, they count all cancers.

4 One of the cancers they count is the mesothelioma. And
5 so from those 13 sites, you can estimate what's the total
6 occurrence, the total deaths of mesothelioma in the country as
7 a whole. And by using the rates from the 13 sites, to
8 multiply them to the country as a whole, essentially adjusting
9 for ages of each of these groups, and so that provides an
10 estimate for every cancer. But mesothelioma, one, is relevant
11 here because we can't make a comparison between Nicholson's
12 projections and the SEER counts for lung cancer, for example,
13 because lung cancer is caused by other matters and other
14 toxins than asbestos, primarily smoking. So there will be
15 many more lung cancer deaths in this country than Nicholson
16 forecasts for that are asbestos-related, but for mesothelioma
17 the only known cause is asbestos.

18 So you can compare that and see how well Nicholson's
19 forecasts of annual Mesotheliomas death compare to the
20 estimates that were derived from SEER. And that's shown on
21 Table 32 where the red line is the forecast and the blue line
22 is the SEER count. And this is a standard way to test
23 projections. You would look at, to the degree you can look
24 into the future, the data for the period of time of the
25 projection you compare it with counts. And the test is how

Peterson - Direct - Inselbuch

1 well does the forecast essentially fit within the range. And
2 you're going to get a range of numbers for any data, like
3 SEER. How well does it seem to kind of hit the midpoint over
4 time? Is it a good estimate? Does it provide a good general
5 estimate of the trends you see?

6 You could tell the difference between forecasts, which
7 are smooth lines, and data, which are always bouncy or
8 irregular. Data is messy, it has discontinuities to it in
9 part because there's a certain randomness to the occurrence of
10 Mesotheliomas in part because its just based on 13 sites which
11 will project -- and if we count the country as a whole so
12 there probably will be smoother data. And here we've seen
13 that, as in the year 1982 when the forecasts were made, this
14 is an impressive confirmation of the forecasts. Forecasts
15 aren't particularly good 20 years out, but here Nicholson's
16 forecast is almost dead on in the midpoint of these, of the
17 data, the best data that we have available over time.

18 Let me make a couple of comments about that. In recent
19 years, the last couple years the SEER count is a bit lower,
20 but you can't draw any conclusions from that. And to
21 illustrate that, if you look around just before 1990, the SEER
22 counts were, again, lower for a series of years compared to
23 Nicholson. Some people were asserting at that point in time
24 that Nicholson had overestimated the mesothelioma deaths based
25 on the experience in those several years. Well, as you can

Peterson - Direct - Inselbuch

1 see, this demonstrates that, no, he nailed it, he hit it very
2 well. And so you can't draw conclusions from a year or two of
3 experience. You can't draw conclusions from the fact that in
4 1993 or something the point was higher, the SEER count was
5 higher, that's just randomness in the data, what's important
6 is the general pattern.

7 Q. Starting then with the Nicholson projections, did you
8 then consider the propensity to sue Turner & Newall for cancer
9 claims?

10 A. Yes. And Figure 13 illustrates what that calculation is.

11 Q. You said 13.

12 A. 33. Excuse me.

13 Q. Sorry.

14 A. This just takes both of these curves, the claim filings
15 against Turner & Newall for mesothelioma and the Nicholson
16 forecasts for mesothelioma, from the period 1990 through 2001.
17 Over that period of time, the forecast of mesothelioma deaths
18 was increasing but slowly. The number of mesothelioma claims
19 against Nicholson -- against Turner & Newall were increasing
20 over that period of time but remained perhaps 40 percent of
21 the mesothelioma deaths. So Turner & Newall, even in the most
22 recent years, was getting a relatively small portion. The
23 Manville Trust experience in the most recent years, it's
24 getting 90 percent of the forecasts of mesothelioma deaths,
25 deaths that Nicholson has. So there's room for increase here.

Peterson - Direct - Inselbuch

1 Let me also comment, this calculation, this is how I
2 calculate propensities to sue, I divide the blue line in
3 2000/2001 by the red line. The red line represents deaths.
4 Blue line represents claims. One or two other forecasters
5 have made, commented on the fact that those are two different
6 metrics. It doesn't make any difference that one is deaths
7 and one is claims because among the deaths that occur for all
8 of the asbestos-related cancers, the most deaths occur in the
9 year of filing. And if you look at how many deaths occurred
10 before and after, it's relatively close. There are about as
11 many before as after. Typically, there are somewhat more
12 deaths that occur before than after, but it differs somewhat
13 from disease to disease. So if you total up all the deaths
14 across all the years, you end up with effectively the same
15 number of -- and just count deaths, you get the same number
16 of -- the number as claim filings because they're centered and
17 relatively symmetrical around the year of filing.

18 And I've tested this. I've tested this in other cases.
19 I've looked at this again and again in order to make sure that
20 there isn't some bias that occurs by using these methods.
21 I've tested it in this case and I've provided some discussion
22 of this in my rebuttal report in this case. If one wants, you
23 can convert the Nicholson filings, Nicholson deaths to claim
24 filings based upon the experience what's the relationship
25 between the distribution of deaths compared to distribution of

501

Peterson - Direct - Inselbuch

1 filings. You can convert the Nicholson filings into claims
2 filings and you get almost exactly the same forecast.

3 Unfortunately, you can't simply count the deaths that
4 occur within the claims filed against Turner & Newall for a
5 couple reasons. One is that there are some people that have
6 already filed claims for mesothelioma against Turner & Newall
7 as of 2001 that had not yet died. Some people die after they
8 file claims. If you use a death year rather than a filing
9 year, you're excluding some claims and you're lowering your
10 forecast. Conversely, there are people who died before
11 October 2001 from mesothelioma, many people who would have
12 subsequently filed a lawsuit against Turner & Newall but were
13 barred because of the filing of the bankruptcy and the stay.
14 So those are deaths that already occurred and they would need
15 to be considered in trying to do a calculation if you're using
16 death for the filing year. But we don't know who those
17 persons are because they have not come forward, they have not
18 filed claims, they cannot be included in the database. So you
19 can't really do an effective forecast of comparing the deaths
20 as are recorded in Turner & Newall's database with the deaths
21 that are recorded by Nicholson. So it produces it produces a
22 low bias unless you try and estimate how many people who have
23 already died will file claims in the future but if you do
24 that, then you have to make a forecast which becomes an
25 assumption for your forecast and it becomes a circular

Peterson - Direct - Inselbuch

1 exercise. So for that reason, there's no reason to be
2 concerned about the difference between, ones called filing
3 year, one is called death year, it doesn't make any difference
4 if we had converted either of these things, you get the same
5 results.

6 Q. Having compared these two curves and having explained
7 that the propensity to sue you would measure in each year by
8 dividing one by the other, what were the next steps you took
9 in forecasting the future for Turner & Newall?

10 A. Well, the next step is to estimate what would be the
11 future propensity to sue. Because as we've seen, Nicholson
12 makes forecasts of asbestos-related mesothelioma, lung cancer,
13 and other cancers up to the year 2030. There are other
14 forecasts that are made. The most notable one was done by
15 KPMG Peat Marwick in the National Gypsum bankruptcy in 1992
16 that applied the Nicholson method and they've made some
17 changes in it. It's a reasonable forecast. The SEER data as
18 well, they forecast to the year 2050. So we can use the KPMG,
19 the trends in the KPMG forecast to extend Nicholson out
20 further years. Nicholson just cut off his forecast in 2030
21 because, for whatever reason, but he cut it off when there was
22 still a substantial number of deaths, for instance, cancer.
23 So there would be -- and Nicholson acknowledge there would be
24 deaths in future years and we extend that out.

25 MR. STROCHAK: I'm having difficulty hearing the

Peterson - Direct - Inselbuch

1 witness.

2 THE WITNESS: I'll try to speak up.

3 So what we do for each future year, we now forecast up
4 to the year 2040. We have a medical epidemiological forecast
5 of the number of people who will die for each of the cancers,
6 we've calculated historic propensities to sue and trends of
7 propensities to sue. So they then -- and that's reflected on
8 the top calculation in number of claims divided by incidence
9 is propensity to sue. To project into the future, we now take
10 our calculation of the propensity to sue, multiply it by the
11 incidence in order to estimate what will be the number of
12 claims occurring in the future years. So, essentially, it's
13 just reversing the calculation given that we know the
14 incidence of diseases and now we have an estimate of the -- we
15 have a calculation of the past claiming rate and we're going
16 to estimate it two different ways as I'll describe. The
17 future, we can calculate what it's likely rate of claim will
18 be in the future, both the Turner & Newall past experience as
19 well as the trends that are going on.

20 Q. Could you describe to the Court how you went about then
21 projecting the propensity to sue for Turner & Newall for the
22 future?

23 A. Well, we made two alternative calculations of the future
24 propensity to sue and they're illustrated on Table 35, Graphic
25 35. There are four lines -- there are five actually. The red

Peterson - Direct - Inselbuch

1 line is the Nicholson incidence forecast extended to 2040, as
2 I described. The blue line proceeding the -- the vertical
3 line in the black simply represents the timing of the
4 bankruptcy. And for that the blue line is the number of
5 mesothelioma claims filed annually against Turner & Newall.
6 We have two alternative forecasts. The green line represents
7 what would be the future number of claims filed against Turner
8 & Newall simply based upon the 2000 and 2001 propensities to
9 sue against Turner & Newall with no increase -- no decrease in
10 the propensities to sue in the 21 months prior to the
11 bankruptcy. The purple line is an increase in propensity to
12 sue where we forecast that the rate of claiming against Turner
13 & Newall would continue on as it has in the past years for a
14 longer period of time. And that -- so we gradually increased
15 the propensities to sue from the year 2002 through 2005, I
16 believe it is, or 2006, and then at that point we then just
17 leave the propensity to sue alone. And the claims begin to
18 drop off under both of those two forecasts simply because of
19 mesothelioma incidence figures are going down.

20 And we increase -- the increase in the propensity to
21 sue is based upon, one, the fact that this has been happening
22 against Turner & Newall prior to its bankruptcy, even before
23 the 2000 and 2001 filings had occurred, bankruptcy filings had
24 occurred that affected claiming against them. It's based upon
25 the assumption that once Turner & Newall had left the CCR,

Peterson - Direct - Inselbuch

1 we'd get many more claims because it lost the protection, the
2 low visibility the Center For Claims Resolution provided, it
3 would get more claims because now it's really the target
4 defendant because of its terrible corporate history in a world
5 in which all of the other asbestos defendants were in
6 bankruptcy. So plaintiffs lawyers would begin to look more
7 and more to Turner & Newall to compensate and make up for the
8 loss of compensation. So for all these reasons, it's my
9 preference, and I think it's more likely probability, that the
10 propensity to sue would increase.

11 Now, will the increase by precisely the number, the
12 rate I've got here? No, of course not. I mean, the one thing
13 I can assure you is I will not be precisely right in my
14 forecast. Forecasting is a process of error. So it may go up
15 faster or slower than this. And, indeed, if we look at what's
16 happening to other defendants at this point in time in 2003,
17 2004, other defendants who were in the CCR and left, it
18 suggests that I've underestimated the rate of increase. But I
19 think between the two of those, the increase in propensity to
20 sue is more plausible. So I present both to the Court, and I
21 provide forecasts using both models so that the Court can, if
22 the Court doesn't agree with my assumptions, you will know
23 what I would forecast to be the future liability assuming that
24 the rates of claim in the past were the same.

25 Q. You told the Court that you looked at data from periods

Peterson - Direct - Inselbuch

1 after 2000 and 2001 from other sources to provide essentially
2 a sanity check for your assumption or conclusion that the
3 propensity to sue would increase. Can you describe for the
4 Court what those sources were?

5 A. Well, I have stated, for some other defendants who remain
6 in bankruptcy, remain in the tort litigation and filed
7 bankruptcy subsequent to 2001, and I have data, I looked at
8 liability, which showed increases in the claims filed against
9 them, none of those defendants are particularly similar to
10 Turner & Newall. I've data from the asbestos trust, primarily
11 the Manville trust for their claim experience, and I've also
12 looked at -- I tried to obtain information from the financial
13 reports of former CCR members. And only one of which provides
14 the kind of data that's useful is Union Carbide.

15 So I looked at the annual claim files against Union
16 Carbide, which is a CCR -- it left CCR. It continues in tort
17 litigation and it reports it's annual number of claim filings.
18 It doesn't do it by disease, but provides annual numbers of
19 claim filings across all diseases in its financial statements.

20 Q. What did you observe there?

21 A. Well, I observed -- first, let me know note that Union
22 Carbide had a lower share of CCR liability than Turner &
23 Newall. We've learned that Turner & Newall was one of, held
24 one of the three board memberships of CCR, which were held by
25 the three companies with the largest liability, largest share.

Peterson - Direct - Inselbuch

1 Turner & Newall is one of, was the third largest of the CCR
2 members. Union Carbide was not among the top three, so it was
3 a lower share of CCR. In 2001, the year that Turner & Newall
4 filed bankruptcy, Union Carbide received 73,000 claims.
5 During the 44 months before it went into bankruptcy, Turner &
6 Newall received 9,000, which we've estimated is approximately
7 60,000 if the year had gone on. This suggests that perhaps my
8 filling in the last three months was conservative, that Turner
9 & Newall might have received claims at a higher rate during
10 the last three months than it did before but, whatever, 60 and
11 70 thousand is fairly close.

12 When we look at the filings in 2002 and 2003 for Union
13 Carbide, in each year they received 122,000 claims. Now, I
14 don't -- and then in 2004 they received 58,000 claims. And I
15 understand why they got fewer claims in 2004 than they did in
16 2002 and 2003, but in all four of those years the actual
17 claims experience from Union Carbide, which had a lower share
18 of CCR than Turner & Newall did, was far in excess of my
19 forecast. In 2002 and 2003 I'm forecasting respectively
20 40,000 and 45,000 will be filed for the sue models for Turner
21 & Newall. So Union Carbide was getting approximately three
22 times as many claims in those three years than I forecast for
23 Turner & Newall. In 2004, I forecast that there would be
24 51,000 claims against Turner & Newall. Even with the
25 substantial drop off in the number of claim filings against

Peterson - Direct - Inselbuch

1 Union Carbide in 2004, it's still well above what I forecast
2 for Turner & Newall in that year.

3 So these results do two things, one they give me
4 confidence that both of my models, and particularly the
5 increasing model, do not overestimate Turner & Newall's
6 liability and they suggest, again, that, once again, my track
7 record will be relatively unsullied, that I probably
8 underestimated Turner & Newall's liability, at least for this
9 period of time.

10 MR. FRIEDMAN: Your Honor, excuse me. I don't believe
11 that Dr. Peterson's analysis of Union Carbide was contained in
12 any of his three reports in this case. I think what he's
13 offering is anticipatory rebuttal testimony as to what he
14 thinks Dr. Cantor might testify to. If I'm incorrect it being
15 in reports, just tell me.

16 MR. FINCH: Is it in his reports. He states he's
17 reviewed the Union Carbide financial statements. And in
18 response to questions at the deposition he mentioned Union
19 Carbide and its experience post-2001 in one of his answers,
20 which I can cite the Court to if you would like.

21 MR. STROCHAK: I'll be happy to look at it when I can
22 find it in a moment. I do think it's in the nature of
23 rebuttal, your Honor, and if your Honor would keep it in mind
24 for that. Thank you.

25 THE COURT: All right.

Peterson - Direct - Inselbuch

1 MR. INSELBUCH: May I proceed?

2 THE COURT: Yes, you may.

3 BY MR. INSELBUCH:

4 Q. You mentioned you told the Court that there was a drop
5 off in 2004 in the claims against Union Carbide. Had Turner &
6 Newall remained in the tort system, would you have expected a
7 drop off in claims filing against Turner & Newall as well in
8 2004?

9 A. I would have expected -- two responses to that. Knowing
10 what I know now, yes, I would have expected in 2004 the claims
11 would have, knowing what I know now from Union Carbide, I
12 probably would have had a bigger rate of increase. But
13 whatever level I would have forecast to 2002 and 2003 would
14 have expected -- there would have been a reduction in the
15 claims filed against Turner & Newall in 2004, but I would have
16 expected that in 2005 or 2006 there would have been a rebound
17 which would have made up many or most of the claims that
18 weren't filed in 2004.

19 It's a timing issue. And it's a timing issue that
20 arises because of the legislation that's being considered by
21 the United States Senate. The United States Senate began to
22 seriously consider passing legislation that would terminate
23 asbestos litigation and substitute a national fund
24 legislation. That's still being considered. That recently
25 passed the Senate judiciary committee. And that's really the

Peterson - Direct - Inselbuch

1 most serious consideration of asbestos legislation I think
2 ever, certainly within the last 15 years or so.

3 The consideration and the possibility that this
4 legislation might pass had a dampening effect upon asbestos
5 litigation. It did a number of things. One, it reduced the
6 amount of settlements that defendants had reached. The
7 defendants who were in tort litigation report in their
8 financial statement that they settled fewer claims in 2004,
9 paid fewer claims in 2004 and the latter part of 2003 than
10 they had in the prior couple years and paid less money in
11 indemnity payments.

12 And there were a couple reason for them doing so. One
13 is that the share that a company would have to contribute to
14 the national fund, should the legislation pass, is based upon,
15 in part, by how much they paid in the past. So if they paid
16 more, if they continue to pay money to these asbestos victims,
17 they may get kicked up into a higher strata of having to
18 contribute to the fund.

19 The second is that whatever settlement -- if the
20 legislation passes and those claims, and a claim is pending
21 against Union Carbide, Union Carbide would be free of
22 obligation, it wouldn't have to pay that claim. And so -- but
23 if they paid and settled that claim in 2004, they would get no
24 reduction in what they'd have to pay in the future, so
25 essentially they're wasting money. It's a cold way to look at

Peterson - Direct - Inselbuch

1 it, but from the financial perspective of the company,
2 payments that it had to make to asbestos claimants in 2003,
3 2004, this year, may be unnecessary if they're going to be
4 freed of that obligation by the fund. And so insurance
5 companies -- the same consideration for insurance companies.
6 The insurance companies and asbestos defendants have tried not
7 to settle claims. Now they have to settle some because trials
8 continue, of course, and they face trial pressures, but they
9 greatly reduced the amount they paid.

10 In turn, the plaintiff's bar has substantially reduced,
11 perhaps almost totally eliminated, substantially reduced their
12 efforts in obtaining new representation of asbestos
13 defendants. They quit advertising to some degree. They quit
14 the, what's been called the screening programs that generate
15 non-malignant claims because those are expensive propositions
16 for them. Perhaps one thing I've learned more clearly than
17 anything else in 25 years of working in this area is there are
18 few human beings cheaper than plaintiff's lawyers. If they
19 don't have to spend money, they won't. Here if they spend
20 this money on advertising or recruiting claims, they're not
21 sure they'll get a return on it if the legislation passes so
22 claim filings are down. Particularly for the non-malignant,
23 claim filings are down, claim settlements are down.

24 The one thing that may not have dropped down, and
25 there's evidence of this -- that seems not to have dropped

Peterson - Direct - Inselbuch

1 down is evidence of this from the Manville trust experience,
2 is that filings for Mesotheliomas and cancers actually have
3 continued to increase. I think the reason why there's this
4 difference between an increasing number of cancer claims and a
5 reduction in the non-malignant claims is because the statutes
6 of limitations are triggered by a diagnosis of mesothelioma or
7 lung cancer that's attributed to asbestos. So these claims
8 have to be filed whereas the non-malignant generally don't
9 arise by a particular diagnosis, and those are insidious
10 diseases that can be diagnosed at any point in time. You're
11 getting it. It's evolving. It progresses. So if these
12 claims haven't been screened or haven't been reviewed by a
13 doctor, they're less likely to have a diagnosis that's going
14 to trigger the statutes. So I think that's why you see these
15 differences.

16 This observation, my comments about what's happened
17 that attributes to this reduction in claim filings to the
18 statute, pendency of the statute has been recognized broadly.
19 Manville trust has recognized it in their filings with Judge
20 Weinstein and Judge Lifland.

21 Q. Then am I correct that Slide 35 in effect graphically
22 represents your projection or forecast of mesothelioma claims
23 that will be filed against Turner & Newall, actually two
24 forecasts from 2001 into 2040?

25 A. Those are my forecasts and my forecasts I presented to

Peterson - Direct - Inselbuch

1 the Court.

2 Q. How did you go about forecasting other malignant claims?

3 A. It is precisely the same kind of calculation, you
4 calculate propensities to sue. And we did the same -- and had
5 two alternative models, increase in propensity to sue we
6 forecast will occur is one model and the second model is a
7 propensity to sue will remain unchanged from the levels in
8 2000, 2001. I could have presented those graphics and they
9 would have looked almost identical to this graphic.

10 Q. How did you go about forecasting the projection of
11 non-malignant claims?

12 A. I mentioned that briefly before, because there is no
13 similar epidemiological available period or epidemiological
14 study by Nicholson, we looked to historic claims experience
15 and found there was a fairly -- this is a pattern we see with
16 all defendants, that there's a fair stability in the ratio of
17 the number of cancer to non-cancer claims, which is shown on
18 Exhibit 36. And here the red line indicates that annual
19 number of filings of non-malignant claims against Turner &
20 Newall, the blue line is the annual number of claims of
21 cancer. These are put on different scales because there's so
22 many more non-malignant claims, you couldn't see the trend if
23 they were on the same scale. It doesn't distort anything,
24 this is a way of looking at what the trends are. And,
25 essentially, it's a way of kind of looking at the

Peterson - Direct - Inselbuch

1 non-malignant number.

2 Each point of a non-malignant curve represents about
3 nine or ten, as many claims as cancers. When you do this, you
4 see that since 1995, even, indeed, since 1992, there's a fair
5 correspondence in the number of non-malignant to cancer claims
6 where the ratios are reflected by these different scales.
7 Prior to 1992 or so, there were relatively fewer non-malignant
8 claims. So what's happened in the early '90's? The number of
9 non-malignant claims relevant to cancers increased. There
10 were -- there was an increase in the number of non-malignant
11 claims at that point in time, but then it stabilized pretty
12 much since then with the exception of 2001. 2001 there's a
13 sharp departure, there are many more non-malignant claims
14 relative to cancers filed in 2001 than there were in prior
15 years. Because of that one -- so I used this data essentially
16 to establish the ratio. So in each future year I have
17 calculated the number of cancers that forecast will be filed
18 against Turner & Newall in that year.

19 I then looked to the data that are represented on this
20 chart and looked at what's the past ratio of cancers to
21 non-malignant claims. And I used that ratio, multiplied that
22 ratio times the number of cancers that I forecast in the year
23 in order to estimate the number of nonmalignants that will be
24 filed. But in calculating that ratio, I used only the year
25 2000, there were a lot of claims filed in 2000 and I used that

Peterson - Direct - Inselbuch

1 year. Typically, I would have used the last two years, 2000
2 and 2001, but the number, the relative number of non-malignant
3 claims is so much greater in 2001, I have no confidence that
4 that's going to be true in the future years. So I calculate
5 this only on the year 2000.

6 I've done sensitivity analyses where I use both years.
7 And, indeed, I've done sensitivity analysis, alternative
8 forecasts where I calculated the ratio from 1999, 2000, and
9 2001. But my purposes here, and the ratio for 2000 is
10 essentially representative of what was from -- every year from
11 1992 on.

12 Q. Based upon these ratios, did you do a projection of
13 filings for non-malignant claims from 2002 to 2040 for Turner
14 & Newall?

15 A. Yes, I did. And that's shown graphically on Page 37,
16 Slide 37. It's the top pair of lines. Where again, before
17 the bankruptcy, the number of non-malignant claims against
18 Turner & Newall are shown as the blue line. My forecast is
19 the purple line. And the cancer filings are also shown here
20 as the red line. My forecast of cancer filings is shown as
21 the green line. This particular slide represents the forecast
22 for my increasing propensities to sue.

23 The non-malignant claims increased between 2000 and
24 2006 for two reasons. One because the cancers have been
25 increased, so just -- the cancers increase so the

Peterson - Direct - Inselbuch

1 non-malignants would increase because there are multiples of
2 about, I think eight or nine to one, so they'll increase, too.
3 But also is it data that we use to derive our rates of
4 increase in the propensities to sue was drawn from experience
5 of the Manville trust and the UNR trust during the late 1990s.
6 It's a conservative estimate of the rates of increase. And
7 they observed that this ratio for them, the ratio between
8 non-malignant and cancer claims, I call it the non-malignant
9 multiplier, the non-malignant multiplier had itself increased
10 about 11 percent in that period of time. So I assume that
11 between 2002 and 2006, the ratio would have increased. You
12 just multiply it times 1.11 and by 2006 it gets to that point.

13 Also, I need to point out that my forecast,
14 particularly for non-malignant claims in 2002, is well below
15 the actual experience in 2001 the actual filings, the annual
16 actual filings. So even though I have an increasing
17 propensity to sue model here for the non-malignant claims,
18 there's only one year, 2006, when I forecast more
19 non-malignant claims will be filed against Turner & Newall
20 than they actually received in 2001.

21 Q. Did you make an alternative forecast assuming that there
22 would be no increase in the propensity to sue for
23 non-malignant claims?

24 A. Yes, I did. That's Slide 38. And that now both the
25 cancers and the non-malignant claims are at their highest in

Peterson - Direct - Inselbuch

1 2002 and go down progressively. It's harder to see for the
2 green line because it's relatively flat, but it actually is
3 increased. That's the total for all cancers. But you can see
4 it quite sharply for the non-malignant claims. And that
5 assumption with no increase in propensity to sue represents a
6 complete turnaround in trends for Turner & Newall claim
7 filings for non-malignant claims have been increasing steadily
8 throughout most of the 1990s, this assumption assumes they
9 would go down sharply. It's an assumption for non-malignants
10 that's consistent with assertions by some people that the
11 environment for non-malignants may be changing. So it's a way
12 to quantify it to the degree that there's credibility to those
13 assertions, but I have quantified it here.

14 Again, for the cancer claims, based upon the concurrent
15 experience that we're observing with other defendants, and for
16 all the reasons I've described repeatedly to the Court, I have
17 great confidence that the number of cancer claims against
18 Turner & Newall would have increased after 2001. The number
19 of non-malignant claims I've less confidence about that, I
20 think either model is plausible, it just depends upon what
21 assumptions one makes about how the litigation environment
22 would change. I think at least for the years 2002 and 2003,
23 that the increasing model for non-malignants is the better
24 model because it's consistent what we've seen with other
25 defendants what's going to happen after that probably both are

Peterson - Direct - Inselbuch

1 plausible models.

2 Q. Did you convert these graphics to tabular form?

3 A. Yes, I've summed my -- I've provided sums for the total
4 number of claims for each of these diseases across all future
5 years, and that's shown on Slide 39, where I totalled up year
6 by year all of the mesothelioma claims I'm forecasting. And
7 so on for each disease for the increasing model, I forecast
8 that there will be about a million claims that would have been
9 able and would be filed against Turner & Newall from October
10 1, 2001 through future years. Using the no increased model,
11 that suggests there would be about 770,000 future claims. And
12 the primary difference between those is in the non-malignant
13 claims where it's about 300,000 difference a claim. But the
14 difference is for the non-malignant, the cancer claims are
15 less.

16 Q. Do you provide also the year by year count in your
17 projections?

18 A. Yes, I do. Here in my report, and they're here shown as
19 Table 40, Slide 40, which shows the annual counts of claims,
20 and I note -- I would note that under the no increase,
21 remember, I've annualized, if the court will recall, I've
22 annualized the 2001 figure of the claims, which is, I believe
23 it was around 59,000 claims filed against Turner & Newall.
24 Let me turn back.

25 On Slide 28 when I annualized the 2001 filings, I

Peterson - Direct - Inselbuch

1 forecast -- I calculated that there were 60,000 claims that
2 would likely have been filed in 2001 had it gone all year, and
3 of that about 54,000 of those claims would be nonmalignant, so
4 that's the endpoint when they went into bankruptcy, 59
5 thousand, actually almost, really, 60,000 claims filed for the
6 year, of which 54,000 were nonmalignant claims.

7 When I compare that to my forecasts on Slide 40, my,
8 no increase model just goes way down. It starts out at 40,000
9 claims. So the first year out I've forecast about two-thirds
10 as many claims would have been filed against Turner & Newall
11 as were filed in 2001, so it forecasts a sharp and immediate
12 reduction in claim filings against Turner & Newall, which I
13 don't believe is, consistent with the factors that I've
14 described to the Court, that would be affecting and increasing
15 the numbers of claims against Turner & Newall. So I think
16 that's inconsistent with what are the reasonable expectations
17 based upon what was happening in the tort litigation in 2002.

18 Even under my -- and I've forecast, calculated that
19 there were 54,000 nonmalignant filings in 2001. With the
20 nonmalignant no increase model, its starts out of 37,000 and
21 goes down from there. If you look at the increasing model, in
22 only one year, 2006, do I forecast that future claims filings
23 would be greater than the actual experience of Turner & Newall
24 in 2001. So even though I call it an increasing model, it
25 really doesn't represent an overall increase in the claims